

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

REVOCATO PALMA-ROJAS,  
Petitioner,

No. 97-70232

v.

INS No.  
A39 795 464

IMMIGRATION AND NATURALIZATION  
SERVICE,  
Respondent.

OPINION

Petition to Review a Decision of  
the Board of Immigration Appeals

Submitted April 4, 2001\*  
Seattle, Washington

Filed April 17, 2001

Before: David R. Thompson, Stephen S. Trott, and  
Richard A. Paez, Circuit Judges.

Per Curiam Opinion

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\*The panel unanimously finds this case suitable for decision without  
oral argument. Fed. R. App. P. 34(a)(2).

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**COUNSEL**

Lisa Ellen Seifert, Seifert Law Offices, Olympia, Washington,  
for the petitioner.

Lorri L. Shealy, Office of Immigration Litigation, Civil Divi-  
sion, Department of Justice, Washington, D.C., for the  
respondent.

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## OPINION

PER CURIAM:

Palma-Rojas petitions for review of the decision of the Board of Immigration Appeals ("BIA") denying him relief

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from deportation under § 212(c) of the Immigration and Naturalization Act ("INA"), 8 U.S.C. § 1182(c) (repealed in 1996). We dismiss for lack of jurisdiction.

Our jurisdiction in this case is governed by the transitional rules of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (Sept. 30, 1996) ("IIRIRA") because immigration proceedings were initiated by the INS before IIRIRA's general effective date of April 1, 1997, and the final deportation or exclusion order was filed after October 30, 1996. See IIRIRA § 309(c); Magana-Pizano v. INS, 200 F.3d 603, 607 (9th Cir. 1999).

IIRIRA § 309(c)(4)(E) provides "there shall be no appeal of any discretionary decision under section 212(c), 212(h), 212(i), 244, or 245 of the Immigration and Nationality Act (as in effect as of the date of the enactment of this Act)." Citing § 309(c)(4)(E), in Kalaw v. INS, we dismissed for lack of jurisdiction a petition for review of a discretionary decision by the BIA denying suspension of deportation under INA § 244. 133 F.3d 1147, 1150-52 (9th Cir. 1997) ("[t]he plain language of IIRIRA precludes our direct review of the Attorney General's discretionary decisions").

Petitioner argues that § 309(c)(4)(E) does not apply here because the BIA failed to exercise its discretion when it denied relief under § 212(c). Although § 309(c)(4)(E) does not deprive this court of jurisdiction to review "those elements of statutory eligibility which do not involve the exercise of discretion," id. at 1150, the BIA exercised its discretion in this case by balancing the equities in favor of Petitioner with the adverse matters in the record. The BIA denied relief because it did "not find that the evidence of employment history, good record in prison, and family ties, alone or in conjunction with the other favorable consider-

ations presented, warrant[ed] a grant of discretionary relief given the serious nature of his criminal activity. " This is a

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clear example of a discretionary decision under§ 212(c). Accordingly, we lack jurisdiction to review the petition.

PETITION DISMISSED.

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